

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

Page 1, line 3, remove "a new subsection to section 41-09-70,"

Page 1, line 18, after "41-09-68" insert ", 41-09-70,"

Page 87, line 15, remove the overstrike over "9"

Page 87, line 15, replace "10" with "and 12"

Page 87, line 22, replace "10" with "12"

Page 88, line 5, replace "10" with "12"

Page 88, line 11, overstrike "subsection" and insert immediately thereafter "subsections"

Page 88, line 11, after "5" insert "and 11"

Page 88, line 26, after "in" insert "subsection 11 and"

Page 89, line 9, replace "10" with "12"

Page 89, line 15, after "10." insert "This section prevails over any inconsistent statute, rule, or regulation."

11. Subsections 4, 6, and 10 do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

12."

Page 89, replace lines 17 through 20 with:

"SECTION 76. AMENDMENT. Section 41-09-70 of the North Dakota Century Code is amended and reenacted as follows:

41-09-70. (9-408) Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

1. Except as otherwise provided in ~~subsections~~subsections 2 and 6, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:
 - a. Would impair the creation, attachment, or perfection of a security interest; or
 - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach,

right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

2. Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 41-09-107 or an acceptance of collateral under section 41-09-115.
3. Except as otherwise provided in subsection 6, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
 - a. Would impair the creation, attachment, or perfection of a security interest; or
 - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
4. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this chapter but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:
 - a. Is not enforceable against the person obligated on the promissory note or the account debtor;
 - b. Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - c. Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - d. Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;
 - e. Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

- f. Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.
- 5. This section prevails over any inconsistent statute, rule, or regulation.
- 6. This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.
- 7. In this section, "promissory note" includes a negotiable instrument that evidences chattel paper."

Renumber accordingly